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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5747-N-02]

**Public Housing Assessment System (PHAS) Capital Fund Interim Scoring Notice:
Reinstitution of Five Points for Occupancy Sub-Indicator and Request for Comment**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice makes final a prior notice reinstating, temporarily, the award of 5 points for the occupancy sub-indicator of the Capital Fund Program Indicator to all PHAs for the PHAS Capital Fund Program Indicator. This award of points is provided as regulatory relief from a non-statutory element of PHAS and intended to help lessen the impact of decreases in funding in recent appropriations acts. Adding automatic points for the occupancy sub-indicator will allow PHAs to focus on the statutory criteria for assessing performance under the Capital Fund Indicator, which is timely obligation of the Capital Funds and will in no way limit HUD's oversight and monitoring of PHAs. This notice, in order to ensure there is no confusion on this point, is explicit about the fact that the remainder of the Capital Fund Scoring Notice of February 23, 2011 remains in effect and unchanged by this notice, and if the PHA receives 0 points for the timeliness of obligation subindicator, it is not eligible for points for the occupancy subindicator.

DATES: Effective Date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

APPLICABILITY DATES: This notice applies to PHAs with fiscal years ending March 31, 2014, June 30, 2014, September 30, 2014, December 31, 2014, March 31, 2015, June 30 2015, September 30, 2015, and December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Claudia J. Yarus, Real Estate Assessment Center (REAC), Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW, Suite 100, Washington, DC 20410, telephone 202-475-8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339. Additional information is available from the REAC Internet site at <http://www.hud.gov/offices/reac/>.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2013, HUD published a notice proposing for public comment its intent to reinstitute, temporarily, the award of 5 points for the occupancy sub-indicator of the Capital Fund Program Indicator to all PHAs for the PHAS Capital Fund Program Indicator (78 FR 76160). This final notice follows that proposed notice.

II. The Public Comments

The public comment period ended on January 15, 2014. By the end of the public comment period, HUD received 12 public submissions on a variety of issues. While all commenters except for one agreed with the result of the notice, only one stated unqualified agreement; the other supportive commenters raised issues notwithstanding their overall agreement. A summary of the significant issues raised and HUD's response follows.

Issue: Six commenters agreed with the notice but stated that the change should be implemented permanently. Some of these commenters stated that, absent this relief, the 40

percent reduction in capital funding over the years combined with the elevated standards imposed by UPCS, would increase the number of troubled PHAs due to uncontrollable circumstances. A commenter stated that given the current financial climate, especially in rural areas, the award of five points will make a definite difference. Another commenter stated that it is important to keep up with the area private housing market and maintain the good will of residents.

Response: HUD has determined at this time to not make this a permanent change in the scoring. The purpose of awarding PHAs the full five points for the Capital Fund occupancy sub-indicator automatically for a two year period allows PHAs to focus on the statutory criteria of assessing performance under the Capital Fund Indicator which is the timely obligation of Capital Funds. HUD is providing this relief to help lessen the impact of some of the automatic across-the-board funding cuts on PHAs. Even in times of difficult funding, however, HUD believes PHAs must maximize occupancy to the extent possible.

Issue: Three commenters agreed with the notice but requested that the fiscal years covered by the notice be increased. One commenter stated that the notice should be retroactive to the previous fiscal year. One commenter stated that the notice should include at least fiscal years ending December 31, 2013, and possibly September 30, 2013, out of fairness because of the negative budget impacts of prior Continuing Resolutions and sequestration, which resulted in a full year of reduced allocations, which in turn reduced the commenter's ability to adequately address vacancies during the entire period.

One commenter stated that the notice should be applied to fiscal year 2013 because of the effect of sequestration cuts, which forced them to cut maintenance staff and increased unit turn-around time, and that if the commenter had known that HUD would issue the notice, it would

have waited until 2014 to institute certain policy changes which, although good for the future, increased its short-term vacancy rate. The commenter stated that “We had operating reserves recaptured in 2012 and in 2013 we were only funded at 82 percent. We had to reduce our maintenance staff due to the sequestration and budget cuts. At the same time our units are older and require a longer ‘make ready’ time frame. We have more vacant units than we have ever had. We have 78 applications on our waiting list and 22 vacant units. Our maximum unit turn-around is 4 units a week. Two policy changes contributed to our having a much higher vacancy than usual. First on 7/1/13 we implemented a ‘Smoke-Free’ policy in our elderly high-rise and some family units and we allowed elderly residents to transfer to non-Smoke-Free units. We also implemented a Prompt Rent Pay Policy in 2013, whereby residents that are late paying rent more than 3 times in 12 months, are sent an eviction notice. This caused several evictions in 2013.”

Response: HUD has determined at this time to neither increase the number of fiscal year end dates nor to change the fiscal year end dates for which all PHAs will be awarded five points in the Capital Fund occupancy sub-indicator assessment. HUD declines to make an adjustment in to the applicability date section of the notice because of the spending decisions of particular PHAs in prior fiscal years even given program-wide budget shortfalls. It is the decision of each PHA, based on the funding available in any given year, how to best serve the families in their communities and operate their housing agency during that year, including how best to allocate their funding between the most important capital needs and other programs given the recent funding environment. Going forward, this notice will provide relief to PHAs for two full fiscal years.

Issue: Two commenters stated that, while the notice was “appreciated” and “a welcome and needed form of regulatory relief,” the occupancy sub-indicator under the Capital Fund Indicator should be permanently removed from the PHAS scoring regulations. One commenter stated that housing agencies are already scored in occupancy under the Management Indicator, and the occupancy sub-indicator under the Capital Fund Indicator deters housing agencies from having vacant units necessary to perform construction work to preserve their public housing stock. The other commenter stated that “as the occupancy is already applied in the Management Indicator,” this subindicator is a double penalty.

Response: Removal of the Capital Fund occupancy sub-indicator from PHAS is outside the scope of this notice. This notice is limited to the temporary award to PHAs of the full five points for the Capital Fund occupancy sub-indicator for PHA fiscal years ending March 31, 2014, through and including December 31, 2015. Removal of the occupancy sub-indicator would require a regulatory revision of 24 CFR 902.50(c).

HUD remains concerned about the time dwelling units are in modernization status. The scoring of the Capital Fund occupancy sub-indicator allows up to 4 percent of a PHA’s dwelling units to be vacant at any one time for non-dwelling uses and modernization for the PHA to receive the full 5 points and up to 7 percent to receive partial points. To achieve a higher occupancy rate, which in turn results in a higher Capital Fund occupancy score, HUD encourages PHAs to continue ongoing proactive capital projects, to strategize and stage modernization projects minimizing the number of off-line units, as well as the time they are off-line, and, because not all modernization requires a family to vacate, to consider performing modernization work in occupied units. With the Capital Fund occupancy measure based on data the PHA enters in the Public and Indian Housing Information Center (PIC) as of the last day of the PHA’s fiscal

year, HUD believes PHAs can effectively plan modernization projects early each fiscal year as preparation for the calculation of the occupancy percentage that will be performed at the end of the PHA's fiscal year.

Issue: One commenter opposed the notice, stating that “reinstatement of this scoring sub indicator is duplicative and unfair, and therefore should not occur. PHAs are already rated on occupancy as part of the scoring under management. It makes no sense to score twice on exactly the same criteria, especially since the outcomes are often out of control of the PHA. Further, occupancy rates are in no way linked to the capital fund. The Capital Fund is currently scored based on timely obligation of funds and completion of work. This should remain in place as these are the only factors of any relevance to the Capital Fund.”

Response: It appears this commenter misinterpreted the notice as reinstating the Capital Fund subindicator for occupancy. This notice does not reinstate this subindicator, which is established by regulation at 24 CFR 902.50(c). This notice grants relief to scores under this subindicator. PHAs are reminded that the remainder of the Capital Fund Scoring Notice of February 23, 2011 remains in effect and unchanged by this notice, and if the PHA receives 0 points for the timeliness of obligation subindicator, it is not eligible for points for the occupancy subindicator (see 76 FR 10054).

III. Action

For the foregoing reasons this notice makes final the proposed notice issued on December 16, 2013. Accordingly, this notice advises that HUD is awarding an automatic 5 points for the

Capital Fund occupancy sub-indicator for fiscal years ending March 31, 2014, June 30, 2014, September 30, 2014, December 31, 2014, March 31, 2015, June 30, 2015, September 30, 2015, and December 31, 2015.

Dated: June 26, 2014.

Sandra B. Henriquez,
Assistant Secretary for Public and Indian Housing.

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